IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 1638 of 2007(T)

PETITIONER:

SUBHADRA P.M.,
HSA MALAYALAM, AKM HIGH SCHOOL,
KOTTOOR, KOTTAKAL, MALAPPURAM.

BY ADV. SRI.AUGUSTINE JOSEPH
SRI.K.S.ROCKEY

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE SECRETARY, GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVT. PLEADER SRI.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1	**TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER APPROVED ON 24-09-04 BY THE DEO, MALAPPURAM**
EXT.P2	**TRUE COPY OF THE GOVT. ORDER DTD. 24-10-01**
EXT.P3	**TRUE COPY OF THE REVISION PETITION FILED BY THE MANAGER OF THE PETITIONER'S SCHOOL.**
EXT.P4	**TRUE COPY OF THE JUDGMENT IN W.P.C.NO.7455/04**
EXT.P5	**TRUE COPY OF THE JUDGMENT IN W.P.C.NO.25105/05**
EXT.P6	**TRUE COPY OF THE JUDGMETN IN R.P.NO.745/05**
EXT.P7	**TRUE COPY OF THE ORDER OF THE DIRECTOR OF PUBLIC INSTRUCTION, TRIVANDRUM**
EXT.P8	**TRUE COPY OF THE JUDGMENT IN W.P.C.NO.964/06**
EXT.P9	**TRUE COPY OF G.O. DTD. 4-11-06**
EXT.P10	**TRUE COPY OF THE GOVT. CIRCULAR DTD. 16-03-1988**
EXT.P11	**TRUE COPY OF THE REVIEW PETITION FILED BEFORE R2**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.1638 OF 2007

Dated this the 13th day of March, 2007

JUDGMENT

Petitioner challenges Ext.P9. Case of the petitioner is that while primary school was upgraded as high school, petitioner having 13 years primary department service was promoted as H.S.A. Malayalam. According to the petitioner, she is entitled to full time H.S.A. Malayalam during 2003-04 as per Rule 6D of Chapter XXIII of KER. But authorities sanctioned only a part time H.S.A. Malayalam, it is stated. Petitioner relies on Ext.P4 judgment. By Ext.P9 Government rejected the claim of the petitioner. In Ext.P9, it is stated as follows:

> " The case of examined with reference to the relevant rules and documents produced in support of the request of the petitioner. With regard to the judgment in W.P.(C)No.7455/05, the contention of the petitioner is not relevant since the

judgment of the Hon'ble High Court on petitions of individual cases cannot be taken as a criteria in sanctioning of posts as per General Rules. Further the argument of the petitioner that executive orders cannot override statutory rule is also not sustainable."

2. I heard learned counsel for the petitioner and the learned Government Pleader also.

3. I find it difficult to subscribe to the finding that executive orders can override statutory rule. I feel that the matter has to be re-considered taking note of Ext.P4 judgment. Accordingly, Ext.P9 is quashed and the first respondent will consider and take a decision on the represent ion filed by the petitioner in accordance with law and taking note of Ext.P4 judgment after affording an opportunity of hearing to the petitioner and any other affected party within a period of two months from the date of receipt of a copy of this judgment.

K.M.JOSEPH
JUDGE

sv.